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Environmental Center

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HB 2942

RELATING TO ENVIRONMENTAL PROTECTION

House Committee on
Energy and Environmental Protection and

Public Hearing - February 7, 1996
8:30 A.M., Room 312, State Capitol

By

John Harrison, Environmental Center
Casey Jarman, School of Law
Roy Takekawa, Office of Environmental Health and Safety

HB 2942 would amend Chapter 128D HRS to expand the definitions of "pollutant or contaminant" and "release" and would broaden applicability of the law to include pollutants and contaminants along with hazardous substances.

Our comments on this measure are compiled from voluntarily submitted opinions of the listed academic sources, and as such, do not constitute an institutional position of the University of Hawaii.

We understand the intent of this measure to strengthen provisions of the state's emergency response law, and as presently drafted, the proposed addition to the definition of "pollutant or contaminant" is almost limitless. In practice, the principal benefit of this language is that it provides for inclusion of harmful materials for which designation by rule as hazardous substances has not been completed. However, we also note that the apparent overbreadth of this definition is contextually attenuated by the provisions of §128D-4. This section limits the invocation of the Director's authority to respond to instances which "may present a substantial danger to public health, welfare, or the environment".

However, it appears that inclusion of "pollutants or contaminants" in §128D-3, Reportable quantities; duty to report, may be internally contradictory. Since the category of materials is, by definition, not precisely defined or designated, it is not possible to establish a quantity which conforms to federal standards.

We additionally question the amendment that removes workplace releases from the category of excluded events. Again, it seems as though OSHA-related actions were never an intended focus of the state Emergency Response Act. If pollution in the workplace is of concern, it would seem more appropriate to address work-related injuries in a separate statute. Were the present proposed language to be enacted, what would be the effect on worker's compensation claims?